

# Congressional Record

House of Representatives

March 27, 2003

## **CHILD ABDUCTION PREVENTION ACT**

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 2 printed in House Report 108-48.

AMENDMENT NO. 2 OFFERED BY MR. FEENEY

**Mr. FEENEY.** Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. Feeney:

At the end of title I (page , after line ), insert the following:

### **SEC. . SENTENCING REFORM.**

(a) **REQUIREMENT TO SPECIFY IN THE GUIDELINES THE GROUNDS UPON WHICH DOWNWARD DEPARTURES MAY BE GRANTED.**--Section 3553(b) of title 18, United States Code, is amended to read as follows:

“(b) **APPLICATION OF GUIDELINES IN IMPOSING A**

**SENTENCE.**--The court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that--

“(1) there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described; or

“(2) there exists a mitigating circumstance of a kind, or to a degree, that--

“(A) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

“(B) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

“(C) should result in a sentence different from that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the

purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress."

**(b) REFORM OF EXISTING PERMISSIBLE GROUNDS OF DOWNWARD DEPARTURES.--**

Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended as follows:

(1) Section 5K2.0 is amended as follows:

(A) Strike the first and second paragraphs of the Commentary to section 5K2.0 in their entireties.

(B) Strike "departure" every place it appears and insert "upward departure".

(C) Strike "depart" every place it appears and insert "depart upward".

(D) In the first sentence of section 5K2.0--

(i) strike "outside" and insert "above";

(ii) strike "or mitigating"; and

(iii) strike "Under" and insert:

"(a) **UPWARD DEPARTURES.--**  
Under".

(E) In the last sentence of the first paragraph of section 5K2.0, strike "or excessive".

(F) Immediately before the Commentary to section 5K2.0, insert the following:

**"(b) DOWNWARD DEPARTURES.--**

"Under 18 U.S.C. §3553(b)(2), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that--

"(1) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

"(2) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

"(C) should result in a sentence different from that described.

"The grounds enumerated in this Part K of chapter 5 are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of

downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted."

(2) At the end of part K of chapter 5, add the following new sections:  
``§5K2.22 Specific Offender Characteristics as Grounds for Downward Departure (Policy Statement)

``Age may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by §5H1.1.

``An extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by §5H1.4. Drug, alcohol, or gambling dependence or abuse is not a reason for imposing a sentence below the guidelines.``§5K2.23 Early Disposition Programs as a Ground for Downward Departure (Policy Statement)

``Upon motion of the government stating that:

``(1) due to extraordinary resource constraints, not typical of most districts, associated with the disproportionately high incidence of illegal reentry or other specific offenses within a particular district, the Attorney General has formally certified that the district is authorized to implement an early disposition program with respect to those specific categories of offenses;

``(2) pursuant to such specific authorization, the United States Attorney for the district has implemented such an early disposition program with respect to the category of offense for which the defendant has been convicted;

``(3) pursuant to such an early disposition program, the defendant, within 30 days of his or her first appearance before a judicial officer in connection with such a charge, entered into a plea agreement whereby he or she agrees, inter alia--

``(A) not to file any of the motions described in Federal Rule of Criminal Procedure 12(b)(3);

``(B) to waive appeal;

``(C) to waive the opportunity to pursue collateral relief under 28 U.S.C. §2254 and 2555, including ineffective assistance of counsel claims; and

``(D) if an alien, to submit to uncontested removal from the United States upon completion of any sentence of imprisonment;

``(4) the plea agreement contemplates that the government will move for a downward departure based on the defendant's prompt agreement to enter into such an early disposition plea agreement; and ``(5) the defendant has fully satisfied the conditions of such plea agreement, then, if the court finds that these conditions have been met and also finds that the defendant has received the maximum adjustment for which he is eligible (given his offense level) under §3E1.1, the court may depart downward from the guidelines under this section only to the extent agreed to by the

parties in the plea agreement, which in no event shall exceed 4 levels.

``Commentary

``Several districts, particularly on the southwest border, have early disposition programs that allow them to process very large numbers of cases with relatively limited resources. Such programs are based on the premise that a defendant who promptly agrees to participate in such a program has saved the government significant and scarce resources that can be used in prosecuting other defendants and has demonstrated an acceptance of responsibility above and beyond what is already taken into account by the adjustments contained in §3E1.1. This section preserves the authority to grant limited departures pursuant to such programs. In order to avoid unwarranted sentencing disparities within a given district, any departure under this section must be pursuant to a formal program that is approved by the United States Attorney and that applies generally to a specified class of offenders. Authorization for the district to establish an early disposition program must also have been specifically conferred by the Attorney General, and may be granted only with respect to those particular classes of offenses (such as illegal reentry) whose high incidence within the district has imposed an extraordinary strain on the resources of that district as compared to other districts. To be eligible for the departure, the plea agreement under the program must reflect that the defendant has agreed to an expeditious plea, as described. A defendant who has not received any adjustment for acceptance of responsibility under §3E1.1 cannot receive a departure under this provision.

A defendant whose offense level makes him eligible for the additional adjustment under §3E1.1(b), but who fails to satisfy the requirements for such an adjustment, is likewise ineligible for a departure under this provision. This section does not confer authority to depart downward on an ad hoc basis in individual cases. Moreover, because the Government's affirmative acquiescence is essential to the fair and efficient operation of an early disposition program, a departure under this section may only be granted upon a formal motion by the Government at the time of sentencing. Nothing in this section authorizes a sentence below a statutory mandatory minimum."

(3) Section 5K2.20 is deleted.

(4) Section 5H1.6 and section 5H1.11 are each amended by striking ``ordinarily" every place it appears.

(5) Section 5K2.13 is amended by--

(A) striking ``or" before ``(3)"; and

(B) replacing ``public" with ``public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 1110, or 117 of title 18, United States Code."

(c) *Statement of Reasons for Imposing a Sentence.*--Section 3553(c) of title 18, United States Code, is amended--

(1) by striking ``described." and inserting ``described, which reasons must also be stated with specificity in the written order of judgment and commitment, except to the extent that the court relies upon statements received in camera in accordance with Federal

Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.";

(2) by inserting `` , together with the order of judgment and commitment," after ``the court's statement of reasons"; and

(3) by inserting ``and to the Sentencing Commission," after ``to the Probation System".

**(d) REVIEW OF A SENTENCE.--**

**(1) REVIEW OF DEPARTURES.--** Section 3742(e)(3) of title 18, United States Code, is amended to read as follows:

``(3) is outside the applicable guideline range, and

``(A) the district court failed to provide the written statement of reasons required by section 3553(c);

``(B) the sentence departs from the applicable guideline range based on a factor that--

``(i) does not advance the objectives set forth in section 3553(a)(2); or

``(ii) is not authorized under section 3553(b); or

``(iii) is not justified by the facts of the case; or

``(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or".

**(2) STANDARD OF REVIEW.--**The last paragraph of section 3742(e) of title 18, United States Code, is amended by striking ``shall give due deference to the district court's application of the guidelines to the facts" and inserting `` , except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts".

**(3) DECISION AND DISPOSITION.--**

(A) The first paragraph of section 3742(f) of title 18, United States Code, is amended by striking ``the sentence";

(B) Section 3742(f)(1) of title 18, United States Code, is amended by inserting ``the sentence" before ``was imposed";

(C) Section 3742(f)(2) of title 18, United States Code, is amended to read as follows:

``(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the

order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and--

“(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

“(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);”;

and

(D) Section 3742(f)(3) of title 18, United States Code, is amended by inserting “the sentence” before “is not described”.

(e) **IMPOSITION OF SENTENCE UPON REMAND.**--Section 3742 of title 18, United States Code, is amended by redesignating subsections (g) and (h) as subsections (h) and (i) and by inserting the following after subsection (f):

“(g) **SENTENCING UPON REMAND.**--A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may

have been given by the court of appeals, except that--

“(1) In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date; and

“(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that--

“(A) was specifically and affirmatively included in the written statement of reasons required by section 3553(c) in connection with the previous sentencing of the defendant prior to the appeal; and

“(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure.”.

(f) **DEFINITIONS.**--Section 3742 of title 18, United States Code, as amended by subsection (e), is further amended by adding at the end the following:

“(j) **DEFINITIONS.**--For purposes of this section--

“(1) a factor is a ‘permissible’ ground of departure if it--

“(A) advances the objectives set forth in section 3553(a)(2); and

“(B) is authorized under section 3553(b); and

“(C) is justified by the facts of the case; and

“(2) a factor is an ‘impermissible’ ground of departure if it is not a permissible factor within the meaning of subsection (j)(1).”.

**(g) REFORM OF GUIDELINES GOVERNING ACCEPTANCE OF RESPONSIBILITY.**--Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended--

(1) in section 3E1.1(b)--

(A) by inserting “upon motion of the government stating that” immediately before “the defendant has assisted authorities”; and

(B) by striking “taking one or more” and all that follows through and including “additional level” and insert “timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level”;

(1) in the Application Notes to the Commentary to section 3E1.1, by amending Application Note 6--

(A) by striking “one or both of”; and

(B) by adding the following new sentence at the end: “Because the

Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection (b)(2) may only be granted upon a formal motion by the Government at the time of sentencing.”; and

(3) in the Background to section 3E1.1, by striking “one or more of”.

**(h) IMPROVED DATA COLLECTION.**--Section 994(w) of title 28, United States Code, is amended to read as follows:

“(w)(1) The Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission a written report of the sentence, the offense for which it is imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include--

“(A) the judgment and commitment order;

“(B) the statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range);

“(C) any plea agreement;

“(D) the indictment or other charging document;

“(E) the presentence report; and

“(F) any other information as the Commission finds appropriate.

“(2) The Commission shall, upon request, make available to the House and Senate Committees on the Judiciary, the written reports and all underlying records accompanying those reports described in this section, as well as other records received from courts.

“(3) The Commission shall submit to Congress at least annually an analysis of these documents, any recommendations for legislation that the Commission concludes is warranted by that analysis, and an accounting of those districts that the Commission believes have not submitted the appropriate information and documents required by this section.”.

(i) **SENTENCING GUIDELINES AMENDMENTS.**--(1) Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended as follows:

(A) Application Note 4(b)(i) to section 4B1.5 is amended to read as follows:

“(i) **IN GENERAL.**--For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited sexual conduct if on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor.”.

(B) Section 2G2.4(b) is amended by adding at the end the following:

“(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

“(5) If the offense involved--

“(A) at least 10 images, but fewer than 150, increase by 2 levels;

“(B) at least 150 images, but fewer than 300, increase by 3 levels;

“(C) at least 300 images, but fewer than 600, increase by 4 levels; and

“(D) 600 or more images, increase by 5 levels.”.

(C) Section 2G2.2(b) is amended by adding at the end the following:

“(6) If the offense involved--

“(A) at least 10 images, but fewer than 150, increase by 2 levels;

“(B) at least 150 images, but fewer than 300, increase by 3 levels;

“(C) at least 300 images, but fewer than 600, increase by 4 levels; and

“(D) 600 or more images, increase by 5 levels”.

(2) The Sentencing Commission shall amend the Sentencing Guidelines to ensure that the Guidelines adequately reflect the seriousness of the offenses under sections 2243(b), 2244(a)(4), and 2244(b) of title 18, United States Code.

(j) **CONFORMING AMENDMENTS.**--

(1) Upon enactment of this Act, the Sentencing Commission shall forthwith distribute to all courts of the United States and to the United States Probation System the amendments made by subsections (b), (g), and (i) of this section to the sentencing guidelines,



policy statements, and official commentary of the Sentencing Commission. These amendments shall take effect upon the date of enactment of this Act, in accordance with paragraph (5).

(2) On or before May 1, 2005, the Sentencing Commission shall not promulgate any amendment to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission that is inconsistent with any amendment made by subsection (b) or that adds any new grounds of downward departure to Part K of chapter 5. At no time may the Commission promulgate any amendment that would alter or repeal section 5K2.23 of the Federal Sentencing Guidelines Manual, as added by subsection (b).

(3) With respect to cases covered by the amendments made by subsection (i) of this section, the Sentencing Commission may make further amendments to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission, except the Commission shall not promulgate any amendments that, with respect to such cases, would result in sentencing ranges that are lower than those that would have applied under such subsections.

(4) At no time may the Commission promulgate any amendment that would alter or repeal the amendments made by subsection (g) of this section.

(5) Section 3553(a) of title 18, United States Code, is amended--

(A) by amending paragraph (4)(A) to read as follows:

“(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

“(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

“(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or”;

(B) in paragraph (4)(B), by inserting “, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28)” after “Code”;

(C) by amending paragraph (5) to read as follows:

“(5) any pertinent policy statement--

“(A) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

“(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.”.

(k) **COMPLIANCE WITH STATUTE.**--Section 994(a) of title 28, United States Code, is amended by striking “consistent with all provisions of this title and title 18, United States Code,” and inserting “consistent with all pertinent provisions of any Federal statute”.

(l) **REPORT BY THE ATTORNEY GENERAL.**--

(1) Not later than 15 days after a district court's grant of a downward departure in any case, other than a case involving a downward departure for substantial assistance to authorities pursuant to section 5K1.1 of the Sentencing Guidelines, the Attorney General shall report to the House and Senate Committees on the Judiciary, setting forth the case, the facts involved, the identity of the district court judge, the district court's stated reasons, whether or not the court provided the United States with advance notice of its intention to depart, the position of the parties with respect to the downward departure, whether or not the United States has filed, or intends to file, a motion for reconsideration; whether or not the defendant has filed a notice of appeal concerning any aspect of the case, and whether or not the United States has filed, or intends to file, a notice of appeal of the departure pursuant to section 3742 of the title 18, United States Code.

(2) In any such case, the Attorney General shall thereafter report to the House and Senate Committees on the

Judiciary not later than 5 days after a decision by the Solicitor General whether or not to authorize an appeal of the departure, informing the committees of the decision and the basis for it.

The CHAIRMAN pro tempore.  
Pursuant to House Resolution 160, the gentleman from Florida (Mr. *Feeney*) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Florida (Mr. *Feeney*).

**Mr. FEENEY.** Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, this amendment addresses long-standing and increasing problems of downward departures from the Federal sentencing guidelines. According to the testimony of the Department of Justice, this is especially a problem in child pornography cases.

Although the guidelines continue to state that departures should be very rare occurrences, they have in fact proved to be anything but. The Department of Justice testified before the Subcommittee on Crime, Terrorism, and Homeland Security that the rate of downward departures on grounds other than substantial assistance to the government has climbed steadily every year for many years. In fact, the rate of such departures for nonimmigration cases has climbed to 50 percent in the last 4 years from 9.6 percent in fiscal year 1996 to 14.7 percent in fiscal year 2001.

[Time: 11:45]

Increasingly, the exceptions are overriding the rule.

By contrast, Mr. Chairman, upward departures are virtually nonexistent. During the same period of time, from fiscal year 1996 to fiscal year 2001, the upward departure rate has held steady at 0.6 percent. That means that judges, by a 33 to 1 ratio, are deviating from the guidelines in order to basically help convicted defendants.

The Department of Justice believes that much of this damage is traceable to the Supreme Court's 1996 decision in *Koon versus the United States*. In the *Koon* case, the court held that any factor not explicitly disapproved by the

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sentencing commission or by statute could serve as grounds for departure. So judges can make up exceptions as they go along. This has led to an accelerated rate of downward departures.

Judges who dislike the Sentencing Reform Act and the sentencing guidelines now have significant discretion to avoid applying a sentence within the range established by the commission, and it is difficult for government to effectively appeal such cases.

The amendment I offer today contains a number of provisions designed to ensure more faithful adherence to the guidelines so defendants in cases involving child pornography and sexual abuse receive the sentences that Congress intended.

Specifically, this amendment would put strict limitations on departures by allowing sentences outside the

guidelines range only upon grounds specifically enumerated in the guidelines as proper for departure. This would eliminate ad hoc departures based on vague grounds, such as "general mitigating circumstances." This amendment would also reform the existing grounds of departure set forth in the current guidelines by eliminating those that have been most frequently abused, such as "aberrant behavior," which is already taken into account in a person's past criminal history.

In addition, Mr. Chairman, this amendment would require courts to give specific responses for any departure from the guidelines. It would change the standard of review for appellate courts to a de novo review, which would be more effective to review illegal and inappropriate downward departures. It would prevent sentencing courts upon remand from imposing the same illegal departure on some different theory and only allow courts to reduce a person's sentence for acceptance of responsibility when the government agrees with that finding.

Additionally, the definition of "pattern of activity involving prohibited sexual conduct" in the sentencing guidelines is hereby broadened. Currently, the guideline provides that such a pattern exists only where the defendant engaged in prohibited sexual contact on at least two separate occasions with at least two different minor victims. This definition does not adequately take account of the frequent occurrence where repeated sexual abuse against a single child occurs and the severity of the harm to such victims from such repeated abuse. The amendment would broaden the

definition to include repeated abuse of the same victim on separate occasions.

Mr. Chairman, finally, the guidelines are remanded with regard to penalties for the possession of child pornography in two ways. First, penalties are increased if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence; and, second, penalties are increased based on the amount of child pornography involved in the offense.

The famous philosopher and statesman Cicero said that justice is the set and constant purpose which gives every man his due. Unfortunately, judges in our country all too often are arbitrarily deviating from the sentencing guidelines enacted by the United States Congress based on their personal biases and prejudices, resulting in wide disparity in sentencing.

Mr. Chairman, I would ask my colleagues to support this amendment. I want to thank the gentleman from Wisconsin (Chairman **SENSENBRENNER**) for his great work on the bill, H.R. 1104, in protecting children and for his support for this amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore (Mr. *Shimkus*). Does the gentleman from Virginia (Mr. *Scott*) claim the time in opposition?

Mr. SCOTT of Virginia. Mr. Chairman, I claim the time in opposition.

The CHAIRMAN pro tempore. The gentleman from Virginia (Mr. *Scott*) is recognized for 10 minutes.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would have the effect of turning the sentencing guidelines into mandatory sentences in the cases it affects. We have not had hearings or markups on this matter; and this is not the way we should amend the sentencing guidelines, without thought or consideration.

The purpose of the sentencing guidelines is to provide intelligent consistency in sentencing, considering each sentence within the overall framework of other sentences, and ensuring that more serious crimes get more serious punishment. That is impossible when you just take one crime at a time outside of that context with a floor amendment such as this.

The fact is, it makes no sense to have people with different degrees of criminality getting equal sentences or people with equal degrees of criminality getting vastly different sentences.

The evidence is that the guidelines are operating the way they are supposed to. About 85 percent of the sentences are either within the guideline range or outside of the guidelines at the request of the prosecution.

The sentencing commission should retain the appropriate discretion, since that discretion has been essentially taken away from judges. If we want the commission to look at this specific

problem of downward departures in these cases, we should direct the sentencing commission to do just that and not take it upon ourselves to do it all by ourselves in a vacuum.

Mr. Chairman, I reserve the balance of my time.

**Mr. FEENEY.** Mr. Chair man, I yield 4 minutes to the distinguished gentleman from Wisconsin (Mr. *Sensenbrenner*), the chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Chairman, I compliment the gentleman from Florida for proposing an excellent amendment. Let me say I am really puzzled that my friend the gentleman from Virginia (Mr. *Scott*) is opposing this amendment.

Back in 1992, there was a citizen of Los Angeles County named Rodney King that was beaten up by a bunch of police officers. Those police officers were tried and convicted of a civil rights violation in a Federal Court.

The judge there had a downward departure from the sentence that Police Officer Koon would have received, which would have been 70 to 87 months under the sentencing guidelines. The District Court said, as a result of the widespread publicity and emotional outrage which would have surrounded this case, the officers were particularly likely to be targets of abuse in prison, had they been burdened by having been subjected to successive State and Federal prosecutions. So Mr. Koon only got 30 months in prison, when the guidelines required 70 to 87 months in prison.

Now, the Congressional Black Caucus sent a letter to Attorney General Janet Reno; and that was reported in the August 13, 1993, edition of the Los Angeles Times. The Black Caucus, the gentlewoman from California (Ms. *Waters*), and 24 other members of the CBC wrote the Attorney General asking that this be appealed.

The government did appeal that sentence and won its case in the Appeals Court, and the Appeals Court held that there should be a de novo review of the sentence. Then there was an appeal to the United States Supreme Court which reversed the Appeals Court and said that the only time a district judge's departure from sentencing guidelines could be reviewed and reversed was if there was an abuse of discretion.

There is a provision in the amendment offered by the gentleman from Florida (Mr. *Feeney*) that does precisely what the Congressional Black Caucus asked for almost 10 years ago, and that is to give appeals courts de novo review over sentencing guidelines.

So I am puzzled at the gentleman from Virginia's opposition. We are doing what he asked for, but maybe 10 years too late.

Now, I think it is outrageous that one out of every five cases of those convicted of sexually abusing a child or sexually exploiting a child through child pornography have received a downward departure from the sentencing guidelines. The law says this is supposed to be rare, but, instead, a 20 percent downward departure rate is not rare.

Mr. Chairman, I think that the amendment that has been offered by the gentleman from Florida plugs this loophole. It ought to be passed.

Mr. Chairman, I include for the **RECORD** the August 6, 1993, letter from the Congressional Black Caucus to the Attorney General of the United States.